

H. B. 2045

(By Delegates Perdue, Fleischauer, Cowles, Miller, Rowan, Border, Pushkin and Hornbuckle)

[Introduced January 14, 2015; referred to the
Committee on Health and Human Resources then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1 and §16-46-2, all relating to creating the Overdose Prevention Act; defining terms; providing immunity from citation, arrest or prosecution of certain offenses for certain persons who seek appropriate medical attention upon an overdose of drugs or alcohol; prohibiting seeking appropriate medical attention from constituting a violation of a condition of pretrial release, probation, furlough or parole; requiring certain action from persons seeking appropriate medical attention; providing that seeking medical attention is a mitigating factor at sentencing of any offense arising from the request for medical attention; allowing persons to plead guilty to certain exempted offenses if desired; providing certain exceptions to immunity for evidence found from an independent source; and providing immunity to law-enforcement officers who cite or arrest a person who receives immunity unless the officer acted recklessly or intentionally.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-46-1 and §16-46-2, all to read as follows:

3 **ARTICLE 46. OVERDOSE PREVENTION ACT.**

4 **§16-46-1. Definitions.**

5 As used in this article:

6 "Overdose" means an acute condition that is the result of the consumption or use of a
7 controlled substance or alcohol.

8 "Medical Assistance" means the professional services provided to a person experiencing an
9 overdose by a health care professional licensed, registered or certified under chapter thirty or chapter
10 sixteen of this code, acting within his or her lawful scope of practice.

11 **§16-46-2. Medical Immunity.**

12 (a) A person who, in good faith and in a timely manner, seeks medical assistance for someone
13 or for himself or herself who appears to be experiencing an overdose may not be cited, arrested, or
14 prosecuted for a violation of:

15 (1) Underage drinking as provided in: subdivision (1), subsection (a), section nineteen, article
16 sixteen, chapter eleven of this code; subsection (b), section nineteen, article sixteen, chapter eleven
17 of this code; section twenty-two-a, article three, chapter sixty of this code; subdivision (1), subsection
18 (a), section twenty-four, article three-a, chapter sixty of this code; subsection (b), section
19 twenty-four, article three-a, chapter sixty of this code; subsection (a) or (b), section twelve-a, article
20 seven, chapter sixty of this code; or subsection (a) or (b), section twenty-a, article eight, chapter sixty
21 of this code.

22 (2) Section nine, article six, chapter sixty of this code concerning drinking in public places

1 and possessing of alcoholic liquor.

2 (3) Subsections (c) and (d), section four hundred one, article four, chapter sixty-a of this code
3 concerning delivering or possessing a controlled substance.

4 (4) Section four hundred three-a, article four, chapter sixty-a of this code concerning
5 prohibiting the possession or selling of illegal drug paraphernalia;

6 (5) Section four hundred six, article four, chapter sixty-a of this code concerning distributing
7 a controlled substance to persons under the age of eighteen by persons over the age of twenty-one
8 and distributing by persons eighteen or over in or on, or within one thousand feet of, school or
9 college.

10 (b) A person described in subsection (a) of this section, if physically capable, shall:

11 (1) Provide his or her own full name if requested by emergency medical assistance personnel
12 or law-enforcement officers;

13 (2) Provide any other relevant information requested by the emergency medical assistance
14 personnel or law-enforcement officer that is known to such person;

15 (3) Remain with the individual who reasonably appears to be in need of medical assistance
16 due to an overdose until professional emergency medical assistance is provided; and

17 (4) Cooperate with emergency medical assistance personnel and law-enforcement officers.

18 (c) A person who acts pursuant to subsection (a) of this section is not subject to any sanction
19 for a violation of a condition of pretrial release, probation, furlough or parole.

20 (d) The act of seeking medical assistance for or by someone who is experiencing an overdose
21 shall be considered a mitigating circumstance at sentencing for a conviction of any offense arising
22 from the act of seeking medical assistance.

1 (e) Notwithstanding any other provision of this section to the contrary, a person who acts
2 pursuant to subsection (a) of this section and is charged with an offense not exempted by that
3 subsection may still enter a plea of guilty to an offense exempted by that subsection if he or she, after
4 consultation with an attorney, so desires.

5 (f) The immunity provisions of this section apply only to the use and derivative use of
6 evidence gained as a proximate result of the person seeking medical assistance for an overdose, and
7 do not preclude prosecution of the person on the basis of evidence obtained from an independent
8 source.

9 (g) Except in cases of reckless or intentional misconduct, law-enforcement officers are
10 immune from liability for citing or arresting a person who is later determined to qualify for immunity
11 under this section.

NOTE: The purpose of this bill is to provide immunity from certain offenses for a person who seeks health care for someone or for himself or herself who is experiencing an overdose.

This article is new; therefore, it has been completely underscored.

This bill is recommended for passage during the 2015 legislative session by the Joint Committee on Health.